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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Submitted via email: rule-comments@sec.gov

Re: Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (Release No. 34-86526; File Number SR-FINRA-2019-008)

Dear Ms. Countryman:

Bloomberg L.P. respectfully submits this rebuttal to new assertions set forth in FINRA's October 29th "Response to Comments," including the "additional data analysis" FINRA (at p. 6) reports to have conducted since filing its Proposal dated April 2, 2019 (84 Fed. Reg. 13977).

1. ATS trading data. Citing new TRACE data analysis, FINRA states that "persistent lags between the first reported trades and first reported ATS trades *suggest* that some ATSs *may not* be receiving reference data in a timely fashion to allow them to begin trading." Response at 6 (emphasis added). This assertion is flawed in several respects, and the "additional data analysis" is far too thin to support FINRA's substantial market intervention.

- *Causation.* This data does not show (or even claim) that untimely reference data is the *cause* of differences in the timing of trading on different platforms. The rise in ATS activity in the days following the first secondary-market trade simply indicates a likelihood that new issues will trade directly through a dealer following issuance; as concerns regarding immediacy, certainty, and liquidity-risk wane, ATS activity predictably increases.
- *Size.* FINRA's 2018 data conflates large and small issues to inflate the portion of bonds that could or should be expected to trade electronically. FINRA complains that only 3% of newly issued bonds traded the same day on ATSs. *Id.* Yet that data includes *all* new issue bonds.[1] When the scope is limited to bonds with issue sizes greater than $250 million, the data we presented showed that in Q2 2018, four times as many new issues traded on an

[1] Bloomberg's April 29th letter (at 13) explained this size-based distinction. FINRA never responded. *See also* Larry Tabb, *An SEC-Mandated Corporate Bond Data Monopoly Will Not Help Quality* (May 21, 2019) ("assum[ing] that larger issues are more likely to trade electronically").

ATS on the same day they were priced and traded on a secondary market.[2]

- *Ignoring Current Data.* Comparing this 2018 data to current data shows that movement toward electronic trading is accelerating rapidly in 2019.[3] Q2 2019 data indicates that 30% of bonds that trade electronically on the first day trade on an ATS.[4] Furthermore, 90% of those initial ATS trades occur within an hour of the first secondary market trade.[5] FINRA offers no justification for ignoring the most current data, which shows the market moving in FIMSAC's preferred direction even without regulatory compulsion.

2. FINRA's error rate. FINRA acknowledges commenters' concerns regarding the TRACE new issue error rate, but "believes there is key information missing from th[at] analysis" that makes it "difficult for FINRA to provide a meaningful response." Response at 10. FINRA complains that "it is not clear what TRACE data was used for the analysis [or] which point in time during the trading day was used." *Id.* at 10–11. This is puzzling. The TABB analysis states it used the "initial release" of FINRA's own "TRACE Corporate and Agency Master file."[6] And while "the [TABB] analysis does not explain which of the two sources were deemed accurate," *id.* at 11, neither FINRA nor any other commenter contests that the concern is with the inaccuracy of FINRA's data were it to become a sole-source provider.[7] Regardless of whether FINRA's error rate today is 19% or a somewhat lower number, the point remains that under a single-source model "there may not be the competitive pressure needed to push industry service providers to get this data right, delivered on time, and at a cost-competitive price." Tabb, *An SEC-Mandated Corporate Bond Data Monopoly Will Not Help Quality*.[8]

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[2] *See* Bloomberg Letter (July 1, 2019) at 5.

[3] *See, e.g.*, Kevin McPartland, *New Issue and Volume Drop, E-Trading Hits New Record (Again)* (Nov. 15, 2019), Greenwich Associates, *available at* https://www.greenwich.com/market-structure-technology/november-spotlight-new-issuance-and-volume-drop-e-trading-hits-new; George Bollenbacher and Colby Jenkins, TABB Group, *The Changing Composition of the Corporate Bond Market* (Aug. 27, 2019) (describing the "growth and evolution of electronic [bond] trading venues"); Kate Duguid, *MarketAxess earnings miss, revenue solid as bond traders go electronic* (July 24, 2019) ("Now when markets get volatile, electronic volume picks up because that's a quicker way to access the market and the latest pricing.") (quoting McPartland), *available at* https://www.cnbc.com/2019/07/24/reuters-america-marketaxess-earnings-miss-revenue-solid-as-bond-traders-go-electronic.html.

[4] *See* Bloomberg Letter (July 1, 2019) at 5.

[5] *See* Bloomberg Letter (July 29, 2019) at 6–7.

[6] *See* Bloomberg Letter (July 1, 2019) at 8, citing Larry Tabb, *An SEC-Mandated Corporate Bond Data Monopoly Will not Help Quality* (May 21, 2019) (comparing "the initial release of FINRA's terms and conditions broadcast by the TRACE platform and Bloomberg's corporate bond reference data"); *see also* FINRA TRACE FAQ, available at https://www.finra.org/filing-reporting/trace/faq#Reporting (2.13).

[7] The new data FINRA proposes to supply, moreover, would be far more complex than what it currently aims to supply today—covering 32 rather than 3 fields.

[8] That FINRA may have received some unspecified data that Bloomberg or other vendors had not published, Response at 10 & n.32, is no response to the commenters' consistent and unrefuted objections regarding the high number of errors found in the data FINRA makes available.

FINRA's only response is to assert its "belie[f]" that past error rates are not "indicative of the accuracy of the propos[al]," which would rely on unspecified "system-validated" data. Response at 11. This mere assertion cannot carry the SRO's burden. FINRA offers no concrete or logical reason why the Commission may rely on FINRA's "wait till next year" promise instead of its historical performance.[9] The unrefuted evidence shows that FINRA's existing TRACE system contains a high error rate for comparatively simple data. FINRA offers no evidence or explanation—only an assertion—to undermine the natural inference that a new and more complex system would be less rather than more accurate.

3. Single point of failure. FINRA again acknowledges the risk that a centralized new issue reference service "may create a potential single source of failure," but offers no coherent response. Response at 10. FINRA speculates that vendors will offer redundancy by "continu[ing] collecting" this information in parallel with FINRA. *Id.* FINRA claims that vendors will benefit from "lower research costs" when they can simply redistribute FINRA's own data service for $6000 per month. FINRA offers no reason why vendors would nevertheless continue to fund their own research in addition to paying for FINRA's information. Both cannot be true: vendors would receive no benefit from outsourcing data collection to FINRA if they continue to spend money collecting their own data as a back-up.

4. Market competition and displacement. The Response repeatedly lauds the Proposal for "level[ing] the playing field," "promot[ing] competition," "decreasing entry costs," "lowering the barrier to entry," and "allowing more reference data providers to enter the market." Response at 8–9. Yet it provides no evidence[10] identifying any anticompetitive barrier to entry, artificially uneven playing field, or other market failure that might warrant compulsory centralization of bond reference data. *Cf.* Exchange Act § 15A(b)(6) (association rules designed to, among other things, "*remove impediments to*" a free and open market). Nor does the Proposal respond to commenters' evidence that new vendors have already entered the market. *See* Bloomberg Oct. 24 letter at 5–6 (citing Directbooks example). Much like another would-be FINRA service that failed to survive Commission scrutiny—the commercially driven effort to conscript pink-sheet quotations which was opposed by OTC Markets—FINRA's latest Proposal doesn't fill an unoccupied space in the

[9] Bloomberg commits substantial resources to investigating, validating, and correcting its data. FINRA's proposal includes no similar process to avoid and correct errors, despite objections from commenters that a feasible correction process is essential. *See* IHS Markit Letter at 2 (April 29, 2019) ("FINRA's proposal does not appear to contemplate a process to correct the reference data submitted to FINRA. As the complexity of FINRA's public database for fixed income data becomes more compacted, the value of mechanisms to ensure data accuracy increase commensurately."); SIFMA letter at 2 (Apr. 29, 2019).

[10] The June 11, 2019 FIMSAC recommendation on which FINRA purports to rely, includes a single anonymous complaint from a trading platform that failed to receive timely data from its vendor. Response at 4. FIMSAC asserted its "belie[f] that the SEC could easily establish the extent to which reference data providers have refused to license corporate bond reference data to trading platforms during the last twenty years." FIMSAC Recommendation at 4 n.4. But Bloomberg refuted FIMSAC's speculation about vendor leverage, *see* July 1 letter at 3, and no such record exists—certainly not one that could remotely justify a substantial market intervention on this basis.

marketplace; it commandeers regulatory authority to occupy the market position of forcibly displaced competitors.[11]

5. Unaddressed costs. FINRA advances no reason why the Commission can or should approve its Proposal now that its fee component has been jettisoned until some unspecified time before the Proposal would take effect. Response at 11–12. Deciding to excise the fee analysis, in the face of overwhelming negative commentary, belies FINRA's claim to have provided a "detailed analysis of the Proposal's anticipated costs and benefits." *Id.* at 10.

The Response also appears to misunderstand the concern with this bifurcated approach expressed by the U.S. Chamber, Healthy Markets, the Committee on Capital Markets Regulation, SIFMA, and Bloomberg. The problem is not that FINRA could *entirely* "avoid subjecting the fees to … public comment." *Id.* at 11 n.35. It is that the subsequent fee filing would be immediately effective—even before Commission scrutiny—"as with any other fee." Response at 12 n.35. This would flip the burden of securing Commission intervention from FINRA to affected market participants. *See* 15 U.S.C. § 78s(b)(3)(A); *Carlson v. Postal Regulatory Commission*, No. 18-1328, 2019 U.S. App. Lexis 27630 (D.C. Cir. Sep. 13, 2019) (rejecting burden-flipping approach). Regardless of any justifications for adopting this roundabout approach to fee filings by the not-for-profit FINRA[12] (which has articulated none), approving it would set a terrible precedent that

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[11] The commentary surrounding the failed FINRA pink-sheets effort, Release No. 34-60999, available at https://www.sec.gov/comments/sr-finra-2009-077/finra2009077.shtml, is remarkably similar to that concerning the new Proposal. Letters in the comment file echo that:

- **Anti-innovation/Monopoly:** The Proposal "would discourage competition … by discouraging entry into the market … because one of the primary revenue streams … would be usurped by FINRA," and "will grant a monopoly to FINRA with respect to commercially valuable market data … and discourage, and perhaps completely prevent, other market data vendors from entering the market…." Michael Trocchio (Bingham, for Pink OTC Markets) at 5 (Mar. 19, 2010).
- **Public-private displacement:** The "Proposal would, therefore, replace by regulation the beneficial services currently provided competitively by Pink OTC with the commercial services of FINRA, a quasi-governmental regulator, which, in effect, would result in the nationalizing of the intellectual property produced by Pink OTC." R. Cromwell Coulson (Pink OTC Markets) at 2 (Dec. 14, 2009).
- **Costs/FINRA track record:** "The proposal as written does not document what problems it is trying to solve. It does not indicate cost and revenue estimates…. The track record of FINRA … does not bode well for how well it would operate and maintain the new system after it pushes out the private sector." Prof. James Angel at 3 (Dec. 18, 2009).
- **FINRA rebuttal:** "[R]ather than hindering competition, the [proposal] will spark competition by enabling new market entrants to compete directly (and immediately) with existing trading systems and inter-dealer quotation systems…." Letter from Stephanie DuMont (FINRA) at 4 (Mar. 18, 2010).

[12] *But see* Peirce, The Financial Industry Regulatory Authority: Not Self-Regulation after All, Mercatus Working Paper (Jan. 2015), available at https://www.mercatus.org/system/files/Peirce-FINRA.pdf (describing FINRA's high revenues, balance sheet, and expenditures) ("Concerns about FINRA's lack of accountability loom even larger as FINRA seeks to regulate additional facets of the financial markets…").

could be exploited by other for-profit SROs. The Commission cannot assess or conclude that the Proposal would prove more beneficial and less costly than non-compulsory bond reference data without understanding the additional market-data costs the SRO would impose on market participants.

For these reasons and those set out in the commenters' prior letters, Bloomberg respectfully urges the Commission to reject the Proposal.

Very truly yours,

Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.